

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI

MISC. LAND APPLICATION NO. 41 OF 2020

(Arising from Misc. Land Application No. 11 of 2020, Misc. Land Application No. 24 of 2019 & Land Appeal No. 13 of 2011 High Court of Tanzania at Moshi; Application No. 45 of 2008, Moshi District Land and Housing Tribunal)

TIMOTHY MOSHI APPLICANT

Versus

FLAVIAN MARANDU 1ST RESPONDENT

FRANCIS FLAVIAN 2ND RESPONDENT

MARY NGABANI 3RD RESPONDENT

DONATI NGABANI 4TH RESPONDENT

ANASTAZIA P. MARANDU 5TH RESPONDENT

SEBASTIAN T. MJAU 6TH RESPONDENT

GAUDENS S. NJAU 7TH RESPONDENT

ADELIMARIES S NJAU 8TH RESPONDENT

GERVAS THOMAS 9TH RESPONDENT

LADISLAUS SEBASTIAN 10TH RESPONDENT

11th November & 10th December, 2020

RULING

MKAPA, J:

The applicant successfully appealed to this Court vide Land Appeal No. 13 of 2011 against the Judgment and Decree of Moshi District



Land and Housing Tribunal in **Land Application No. 45 of 2008**. Aggrieved, the respondents appealed to the Court of Appeal of Tanzania in **Civil Appeal No. 4 of 2017** where **Ndika, J.A.** struck out the appeal with costs for being time barred. The applicant then filed **Misc. Land Case Application No. 24/2019** praying for extension of time to file bill of cost out of time. However, on 30th September, 2019 the taxing master Hon. F. H. Mpepo-Deputy Registrar dismissed the application for lack of forum as the appropriate forum for filing the application would have been the last court that had determined the matter.

Aggrieved by the decision, the applicant preferred a reference to this Court by way of chamber summons under Order 7 (1) and (2) of the Advocates Remuneration Order, 2015 (the Order). The respondents disputed the application and filed a joint counter affidavit through Mr. Martin Kilasara learned advocate.

While hearing the application parties consented and the court ordered the same be argued by way of filing written submissions. The applicant was represented by Mr. Peter Eliufoo Shayo learned advocate while the respondents were jointly represented by Mr. Kilasara also learned advocate.

Submitting in support of the application Mr. Shayo submitted that the taxing master dismissed the application without considering

merits or demerits of the bill of cost application but rather the forum adopted in filing the same in which he observed that, since the matter ended up in the Court of Appeal it was the same court where the application for bill of cost ought to have been filed. It was Mr. Shayo's view that, taxing master's argument is in conflict with the law and practice as **Rule 124 (1) of the Tanzania Court of Appeal Rules, 2009** provides that;

"the Registrar shall be a taxing officer with power to tax the cost, as between a party and a party, of or arising out of any application or appeal to the court."

Mr. Shayo argued further that, the Court of Appeal's Registrar is limited to tax bill of cost emanating from appeals and applications to that Court whereas the Order is applicable to matters of this Court and Courts subordinate to it. It was Mr. Shayo's argument that the taxing master's decision is a misconception. He prayed for this Court to set aside the dismissal order and the application for bill of cost be determined on merit.

Responding against the Application Mr. Kilasara submitted that, the applicant did not prove the fact that the taxing master could only tax matters ended in the High Court and the costs incurred in the Court of Appeal are dealt with the Registrar of the Court of Appeal. Mr. Kilasara went on explaining that, the taxing master did not

explicitly determine whether there was sufficient cause for the delay. He finally submitted that, since the applicant has failed to establish sufficient cause for the inordinate delay to move the taxing master to exercise his discretionary powers and award the application, he prayed for the application to be dismissed with costs.

Having read parties' submissions and court's records the question for consideration is whether or not the present application is meritorious. In addressing the instant application I will be guided by the principle set out in the decision in the case of **Maximilian Rwabulala V Emilian Kalugala and Another** [1987] TLR 2 where the Court held inter alia that;

"According to the Advocates' Remuneration and Taxation of Costs (Amendment) Rules, GN 89 and 159 of 1962 Cap 9 of the Applied Laws, the proper Taxing Master is the court where the case terminates. Since the case in point ended in the High Court the District Magistrate had no jurisdiction to conduct the taxation;

... "

Applying the above legal position to the instant application it is plain clear the fact that the applicant did file a Bill of Cost claiming for costs which he had incurred from Court of Appeal in **Civil**

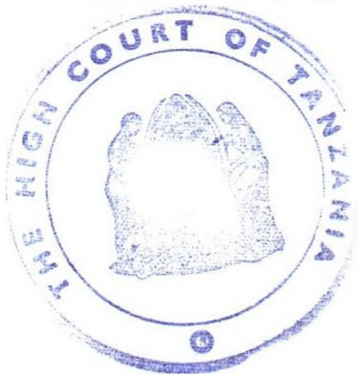
Appeal No. 4 of 2017 and all other costs incurred when pursuing his rights in subordinate courts, thus it is undoubtedly the fact that the taxing court which the applicant ought to have filed his Bill of Cost is the Court of Appeal of Tanzania and not to the taxing master of the High Court. Thus I found no ground to fault taxing master's decision.

In view of the above, I do not find any merit in the application. Accordingly, the application is dismissed, the applicant if he desires is advised to approach the appropriate forum.

I give no orders as to costs.

It is so ordered.

Dated and delivered at Moshi this 10th day of December, 2020.



A handwritten signature in blue ink, appearing to read "S. B. Mkapa".

S. B. MKAPA

JUDGE

10/12//2020